

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1163 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RASIKBHAI AMBABHAI SAKHIYA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP for Respondent Nos. 1 to 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/04/2000

ORAL JUDGEMENT

#. District Magistrate, Junagadh, passed an order on January 21, 2000, in exercise of powers under section 3 (2) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act"

for short), detaining the petitioner - Rasikbhai Ambabhai Sakhiya under the provisions of the PBM Act.

#. Grounds of detention are as per Annexure : B produced on record on January 21, 2000. The allegations in the grounds of detention are that the detenu is involved in the activities of blackmarketing detrimental to smooth supply of essential commodities like Vanaspati Ghee and imported pamolin oil.

#. The detenu has challenged the detention order on various grounds as stated in the petition. However, learned advocate Mr. Thakkar restricted his argument to the ground that there was delay on the part of the detaining authority in forwarding the representation to the State Government. He submitted further that there was delay on the part of the Central Government in considering the representation made on behalf of the detenu. Mr. Thakkar submitted that no attempt is made on the part of the Central Government to explain the delay, if the affidavit is seen. As regards the detaining authority, Mr. Thakkar submitted that a fragile attempt is made to explain the delay in forwarding representation by the detaining authority. Mr. Thakkar submitted that the delay in considering the representation would vitiate the continued detention of the detenu and the petition may, therefore, be allowed.

#. Mr. K.T. Dave, learned AGP appearing on behalf of the Stte Government and the detaining authority as also Ms. P.J. Davawala, learned Central Govt. Standing Counsel, appearing for the Union of India have opposed this petition vehemently.

#. Considering the rival side contentions, if the affidavit-in-reply filed on behalf of the detaining authority is seen, it is clear that the representation made on behalf of the detenu dated February 5, 2000 was received by the Public Relation Officer of the office of the Collector on February 11, 2000. The Registry Branch of the office of the detaining authority received the same from the Public Relation Officer on February 14, 2000 which was received by the Supply Branch on February 15, 2000 and the same was placed before the District Magistrate on February 16, 2000. Since the State Government had approved the detention on January 21, 2000, the detaining authority had become functus officio and therefore, the representation was forwarded to the Central Government on February 16, 2000 itself and the detenu was informed about the same by a communication of the even date.

#. A close reading of the affidavit and the representation produced on record indicates that the representation was addressed to the District Magistrate (detaining authority). Somehow, it seems to have been received by the Public Relation Officer of the office of the Collector. It maybe noted that the office of both the District Magistrate and the Collector are manned by the same person and the infrastructure is also the same. The Registry Branch of the District Magistrate has received that representation on 14th February, 2000 i.e. after 3 days, although the office is the same and even after the receipt on 14th February, 2000, by the Registry Branch, it is placed before the District Magistrate on 16th February, 2000. The outcome is that the representation received on February 11, 2000 came to be forwarded on February 16, 2000 and it remained idle for this period in the office of the detaining authority. Although, the first reading of the affidavit may give an impression that the delay explained, in fact, when it is closely read, it is found that it is only a fragile attempt to explain the delay which cannot be accepted. The delay in forwarding the representation would naturally result in delay in deciding the representation and therefore, would adversely affect the right of the detainee guaranteed under Article 22 (5) of the Constitution of India which would render the continued detention bad in law.

#. Apart from the delay on the part of the detaining authority in forwarding the representation, there is delay on the part of the Central Government in deciding the representation. If the affidavit-in-reply filed on behalf of the Union of India is seen, the representation made on behalf of the detainee was received by the Central Government on February 9, 2000. The same was considered and decided on February 25, 2000. The affidavit-in-reply states that if the representation was received on February 9, 2000, the representation was considered along with parawise comments of the State Government and decided on February 25, 2000. The affidavit is totally silent as to what transpired between February 9, 2000 and February 25, 2000. Why a period of 16 days was taken by the Central Government in deciding the representation is not explained. This delay would also affect the right of the detainee guaranteed under Article 22(5) of the Constitution of India and would render the continued detention bad in law.

#. For the foregoing reasons, the petition deserves to be allowed. The petition is allowed. The impugned order

of detention dated 21st January, 2000 is hereby quashed and set aside. The detenue - Rasikbhai Amba bhai Sakhiya is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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